

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Marriage of SARAH
SEGURA and DALE SEGURA, Jr.

B287012
(Los Angeles County
Super. Ct. No. KD094969)

SARAH SEGURA,

Appellant,

v.

DALE SEGURA, JR.,

Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County. Rocky Lee Crabb, Commissioner. Affirmed in part, reversed in part and remanded with directions.

Sarah Shepard, in pro. per., for Appellant.

Kendall Gkikas & Mitchell and Brian D. Mitchell for Respondent.

INTRODUCTION

Appellant Sarah Segura brought this action for dissolution of her marriage to respondent Dale Segura, Jr.¹ On appeal, she challenges several of the trial court rulings, claiming the court erred by: (1) miscalculating her business income for purposes of child and spousal support by failing to deduct business expenses; (2) failing to award her spousal support; (3) failing to consider evidence of domestic violence in deciding custody over the parties' children; and (4) finding Sarah's wedding ring was community property and awarding it to Dale. As explained below, we agree the court miscalculated Sarah's income and remand for reconsideration of the orders on child and spousal support. We otherwise affirm.

BACKGROUND

A. The Marriage, the Petition, and the Pendente Lite Orders

Dale and Sarah married in August 2000 and separated in March 2016. At the time of their separation, the parties had four minor children, ages 9, 11, 14 and 16. During the marriage, Dale joined the military and served in the Air Force until 2012. Following his discharge, Dale was diagnosed with PTSD and began receiving disability

¹ Following the judgment of dissolution, Sarah returned to her maiden name. To avoid confusion, we refer to the parties by their first names.

benefits. Though he subsequently attended school and graduated with a bachelor's equivalent in business, he did not work. Sarah worked various jobs during the parties' marriage, subsequently obtaining a license to work as a hairstylist.

In May 2016, Sarah filed a petition for dissolution of marriage. Thereafter, each party sought sole legal and physical custody of the children, as well as child and spousal support. The parties also sought the determination of property rights in certain assets, including Sarah's wedding ring, which each party claimed as their separate property.

Prior to trial, the court awarded the parties joint legal and physical custody of the children on a pendente lite basis. Under the court's order, I.S., the oldest child, was to reside with Sarah, and the three younger children were to reside with Dale. Each child was to spend 20% of the time with the child's non-custodial parent. The court also gave Dale exclusive possession of the parties' former family residence, which was a rental property. Finally, the court ordered Dale to make temporary support payments, including \$270 per month in temporary spousal support.

B. The Trial

In July 2017, the matter proceeded to trial, at which both parties testified. Sarah testified she left the former family residence with I.S. in March 2016 after Dale had threatened I.S. She claimed Dale had been violent and abusive with both her and I.S., asserting he once slapped

I.S., and another time placed his hand over I.S.'s mouth and nose when she argued with him.

At the time of trial, Sarah and I.S. lived with Sarah's parents. Sarah was 35 and working as a self-employed hairstylist. She claimed her average monthly income was \$1,441. Regarding her wedding ring, Sarah claimed that it was worth \$1,500 and that Dale gave it to her as a gift after they married.

Dale testified he suffered from PTSD and other related conditions and was not working. He received \$4,701, nontaxable, per month in disability benefits and had health insurance premiums of \$133 per month. When asked, Dale denied ever hitting Sarah and testified she had hit him. As for Sarah's wedding ring, he testified he purchased it for \$7,000 several years into the marriage, using community funds. Dale did not know the value of the ring, but stated Sarah told him the ring was appraised and worth only \$4,000.

C. The Trial Court's Judgment

Following trial, the court ordered the temporary custodial orders to remain in effect. However, it decided not to compel I.S. to visit with Dale. As to child and spousal support, the court rejected Sarah's claimed average monthly income and calculated her average income as \$1,841 per month. It accepted Dale's asserted monthly income of \$4,701, reduced by \$133 in health insurance premiums. Based on a child support guideline calculation, the court

ordered Dale to pay Sarah \$479 per month in child support until I.S. satisfied the conditions of Family Code section 3901.² Thereafter, Sarah was to pay Dale \$316 per month in child support.

As for spousal support, the trial court advised both parties they should make reasonable efforts to be self-supporting. It ordered that the temporary support order remain in effect for two additional months, and that following that period, neither party would pay spousal support to the other. The court noted it had considered the factors of Family Code section 4320 for which evidence was presented. It found the parties' marital standard of living was "less than middle-class." The court concluded Sarah did not establish what amount she would need to remain at the marital standard, and found neither party had the ability to maintain it. The trial court initially found that Sarah was cohabitating with another man, but that the extent of his contributions towards her living expenses has not been established. However, Sarah's counsel informed the court she was not cohabitating with another man, and the court promptly corrected itself.

² Under Family Code section 3901, a parent's duty to support a child who has attained the age of 18, is a full-time high-school student, and is not self-supporting, generally continues until the child graduates or attains the age of 19, whichever occurs first. (§ 3901, subd. (a).) Undesignated statutory references are to the Family Code.

Finally, as to Sarah's wedding ring, the trial court found it was community property and awarded it to Dale at a value of \$4,000. The court found the ring was substantial in value and no written transmutation took place. In determining the parties' property equalization payments, the court credited Sarah \$2,000 for the ring. This appeal followed.

DISCUSSION

A. Failure to Deduct Business Expenses in Determining Sarah's Income

1. Background

Sarah claims the court abused its discretion by failing to deduct business expenses from her income and thus using an erroneous amount to calculate child support and determine spousal support. To prove her income at trial, Sarah submitted an "Income and Expense Declaration" form, in which she claimed her monthly income after business expenses was \$1,441. In an attachment to her declaration, Sarah provided a calculation of her "[a]verage monthly adjusted gross income" for the first six months of 2017, showing a total income of \$13,716.05 and a total expense of \$5,069.47 for "Product," resulting in an average monthly adjusted income of \$1,441.10. She also provided the Schedule C (Profit or Loss From Business) attachment to her 2016 tax return, indicating an annual income of \$21,589 and a total of \$4,991 in annual expenses. Two additional attachments, titled "Sales," detailed Sarah's gross sales, tips,

and credit card processing fees for April and May 2017. These sales reports showed “[n]et [t]otals” of approximately \$1,600 and \$2,000, respectively. Other than the processing fees, the reports did not purport to list business expenses.

The trial court found that Sarah’s claimed monthly income of \$1,441 was inconsistent with the income in her two sales reports, which the court referred to as “profit and loss statement[s]” The court then used an average of the totals shown in the two sales reports, resulting in an average monthly income of \$1,841. The court used that amount in calculating child support and relied on it in part in determining not to award Sarah permanent spousal support.

2. *Analysis*

Sarah claims the court abused its discretion by failing to deduct business expenses from her income. We review awards of child support and spousal support for abuse of discretion. (*In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1312.) “Generally, ‘the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citations.]’ [Citation.] To the extent that a trial court’s exercise of discretion is based on the facts of the case, it will be upheld ‘as long as its determination is within the range of the evidence presented. [Citation.]’ [Citation.] Conversely, a court abuses its discretion if its findings are wholly unsupported, since a consideration of the evidence ‘is

essential to a proper exercise of judicial discretion.
[Citation.]’ [Citation.]” (*In re Marriage of Ackerman* (2006)
146 Cal.App.4th 191, 197 (*Ackerman*).)

In calculating child support, courts use a statutory formula, one component of which requires computation of each parent’s “annual gross income.” (*Asfaw v. Woldberhan* (2007) 147 Cal.App.4th 1407, 1415, italics omitted.) Under section 4058, subdivision (a), “annual gross income” for child-support purposes includes “[i]ncome from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.” (§ 4058, subd. (a)(2).) While section 4320, which governs spousal support, does not incorporate this definition of income, the trial court considered its computation of Sarah’s annual gross income in determining spousal support.³

³ “Permanent spousal support ‘is governed by the statutory scheme set forth in sections 4300 through 4360. Section 4330 authorizes the trial court to order a party to pay spousal support in an amount, and for a period of time, that the court determines is just and reasonable, based on the standard of living established during the marriage, taking into consideration the circumstances set forth in section 4320.’ [Citations.] The statutory factors include the supporting spouse’s ability to pay; the needs of each spouse based on the marital standard of living; the obligations and assets of each spouse, including separate property; and any other factors pertinent to a just and equitable award.” (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1442, citing § 4320, subds. (c)-(e), (n).)

Sarah argues the court miscalculated her annual gross income, basing it almost entirely on gross receipts without an appropriate reduction of business expenses. We agree. As noted, on her “Income and Expense Declaration” form, Sarah claimed a monthly income of \$1,441, after business expenses. To explain how she arrived at that number, Sarah included a separate calculation of her “[a]verage monthly adjusted gross income” for the first six months of 2017. That calculation showed a total expense of \$5,069.47 for the period. Sarah also provided the Schedule C attachment to her 2016 tax return, which reflected an average monthly income of \$1,383.17, after business expenses, similar to, and somewhat lower than, the amount she claimed in her Income and Expense Declaration. According to the Schedule C, Sarah claimed \$4,991 in business expenses for 2016.

The trial court, however, focused on two other documents Sarah provided, showing her “Sales” for April and May 2017. Those sales reports presented only Sarah’s gross sales and tips, and relatively minor credit card processing fees. They did not include any other business expense. Operating under the mistaken assumption that those sales reports were instead “profit and loss statement[s],” the trial court viewed Sarah’s claimed average monthly income after expenses as inconsistent with those reports, which suggested a higher monthly “[n]et [t]otal.” The court then used an average of the totals shown in the two sales reports, resulting in a significantly higher average monthly income of \$1,841. Treating the sales reports as

representative of Sarah's average monthly income after expenses was error, as those reports did not reflect her business expenses.

Attempting to defend the trial court's computation, Dale argues Sarah "did not comply with the simple instructions of the Income and Expense Declaration," suggesting she was required to file an itemized profit and loss statement for each of the first six months of 2017. However, the Income and Expense Declaration instructed Sarah to attach either "a profit and loss statement for the last two years or a Schedule C from [her] last federal tax return." Sarah complied with this instruction by attaching her Schedule C, which provided a sufficient evidentiary basis for a proper computation of her annual gross income. (See *In re Marriage of Loh* (2001) 93 Cal.App.4th 325, 332 ["[a] parent's gross income, as stated under penalty of perjury on recent tax returns, should be presumptively correct"].)

The court's calculation of Sarah's annual gross income, without proper accounting for expenses, constituted an unsupported finding, amounting to an abuse of discretion. (See *Ackerman, supra*, 146 Cal.App.4th at p. 197.) Due consideration of her business expenses, whether based on the amounts in her declaration or those in her Schedule C, would have resulted in a substantial reduction of her annual gross income. Given the significant disparity in income between the parties, this reduction might well have resulted not only in modification of the child support calculation based on the statutory formula, but also in a different

determination of spousal support. Accordingly, we remand for the court to recalculate Sarah's annual gross income and to reconsider its child and spousal support orders in light of its new calculation.⁴

B. Failure to Award Spousal Support

Sarah argues the trial court abused its discretion in failing to award her permanent spousal support, given the income disparity between the parties. Because we remand for reconsideration of the spousal support determination, we need not address Sarah's challenges to the court's substantive exercise of discretion.

Sarah further contends the court erred in finding she cohabitated with another man and in using DissoMaster to determine permanent spousal support.⁵ We disagree. Although the trial court initially stated that Sarah

⁴ While the trial court may rely on Sarah's declaration or her Schedule C in determining her annual gross income on remand (see *In re Marriage of Loh*, *supra*, 93 Cal.App.4th at p. 332), nothing prevents the court from accepting additional evidence on this issue if it deems it appropriate.

⁵ "DissoMaster is a computer software . . . widely used by courts to set child support and temporary spousal support." (*Namikas v. Miller* (2014) 225 Cal.App.4th 1574, 1578, fn. 4.) However, the court may not use DissoMaster in determining permanent spousal support, "even if used only as a reference point." (*In re Marriage of Zywiec* (2000) 83 Cal.App.4th 1078, 1081, 1082.)

cohabitated with another man whose contributions towards her living expenses had not been established, after Sarah's counsel corrected the court, it acknowledged its mistake. Nothing in the record suggests the court's temporary confusion influenced its decision. As for DissoMaster, our review of the record confirms the court did not use it in determining permanent spousal support.

C. Allegations of Domestic Abuse

In her opening brief, Sarah contends that despite evidence of domestic abuse by Dale against her and I.S., the trial court failed "to protect them, or acknowledge the abuse." She appears to suggest the court should have awarded her sole legal and physical custody of the children under section 3044. We review custody orders for abuse of discretion. (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255.)

Section 3044 provides a rebuttable presumption against awarding sole or joint physical or legal custody to a parent found to have perpetrated domestic violence. Here, the trial court made no finding regarding Sarah's allegations of domestic abuse. Thus, section 3044's presumption was inapplicable.

To the extent Sarah argues the court was required to make such a finding, we note Sarah did not ask the court to make findings regarding alleged abuse or seek any protection or substantive relief based on such allegations. Moreover, although Sarah testified Dale had engaged in violent and other abusive behavior during the marriage,

Dale denied ever hitting Sarah and testified she had hit him. Given Sarah and Dale’s conflicting testimonies, the evidence did not compel a finding Dale engaged in domestic violence. In short, Sarah has not shown the trial court erred in failing to provide relief based on her allegations of domestic abuse.

D. The Wedding Ring

The trial court found Sarah’s wedding ring was community property and awarded it to Dale at a value of \$4,000, with a corresponding equalization credit for Sarah. On appeal, Sarah claims the court erred in awarding the ring to Dale, arguing Dale had gifted it to her, and therefore it was her separate property.

“Generally, appellate review of a trial court’s resolution of the character of a particular item of property as separate or community ‘is limited to a determination of whether any substantial evidence supports the finding.’” (*In re Marriage of Nassimi* (2016) 3 Cal.App.5th 667, 684, fn. 31, quoting *In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 849.) In California, subject to few exceptions, “all property . . . acquired by a married person during the marriage while domiciled in this state is community property.” (§ 760.) As a general matter, a transmutation of community property into separate property must be made “in writing by an express declaration” (§ 852, subd. (a).) However, this requirement does not apply to certain gifts between spouses that are used primarily by the recipient and are “not

substantial in value taking into account the circumstances of the marriage.” (§ 852, subd. (c).)

Here, it is undisputed that Dale purchased the ring with community funds during the parties’ marriage, and that he was domiciled in this state. Thus, substantial evidence supported the trial court’s finding that the parties acquired the ring as community property. (See § 760.)

As to transmutation of the ring, while Sarah contends the ring was worth only \$1,500 and was not the parties’ “most expensive asset,” she does not dispute the trial court’s finding that the marital standard of living was “less than middle-class” Under these circumstances, the record supports the court’s finding that the ring was substantial in value and that no transmutation occurred absent a written declaration to that effect. (See § 852, subds. (a), (c).) Because the record contains no such written declaration, substantial evidence supported the trial court’s finding that the ring constituted community property.

DISPOSITION

The judgment is affirmed in part and reversed in part, and the matter is remanded to the trial court with instructions to recalculate Sarah's annual gross income and reconsider its child and spousal support orders consistent with this opinion. Appellant shall recover her costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

MANELLA, P. J.

We concur:

CURREY, J.

COLLINS, J.